



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 3, 1996

Mr. Richard J. Ybarra
Open Records Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0863

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37687.

The Office of the Attorney General (the "OAG") received a request for the contents of the working file of Attorney General Opinion H-1197 (1978). You claim the requested information is excepted from required public disclosure under section 552.111 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We conclude that some of the submitted information relates to the policymaking functions of the OAG and consists of advice, opinions, or recommendations. We have marked the information that may be withheld.

Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). However, purely factual information, where severable, must be released. If the final version of the document contains the factual information at issue, the release of the final version satisfies this requirement. *Id.* We have reviewed the draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. We have marked the draft documents that may be withheld from disclosure. The remainder of the submitted information may not be withheld under section 552.111.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/LBC/cbh

Ref: ID# 37687

Enclosures: Marked documents

cc: Mr. Jack Balagia, Jr.
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(w/o enclosures)

¹We note that the OAG raised section 552.107 after the ten-day deadline. A governmental body may not raise additional exceptions after the ten-day deadline, including a request for reconsideration, absent a showing of compelling interest. Open Records Decision No. 515 (1988). Moreover, the mere fact that the information is within the attorney-client privilege and thus would be excepted from disclosure under section 552.107(1) of the Open Records Act if the governmental body had made a timely request for an open records decision does not alone constitute a compelling reason to withhold the information from public disclosure. Open Records Decision No. 630 (1994). Accordingly, we do not consider that exception in this ruling.